IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2897 OF 1998

Jetu Jacques Taru Lalvani
Kamanwala Chambers,4th floor
Sir P.M.Road,Mumbai 400001 ...Plaintiff

vs.

1.Rockhard Building Materials Ltd.
16-9-736, Old Malakpet,
Hyderabad 500 036.

2.Mr.Syed Ansar Hussain Naqvi
H.No. 16-2-740/A/1,
Andhra Bank Colony,Malakpet,
Hyderabad 500 036 ...Defendants

Mr.N.K.Mudmaney for the Plaintiff
None for the Defendant

CORAM: A.S.OKA,J.
DATE : AUGUST 28,2007

ORAL JUDGMENT:

1. The suit is listed under the caption 'Undefended suits for exparte decree'. The suit is filed for recovery of a sum of Rs.98,62,027/- together with interest thereon at the rate of 18% p.a.

2. The first defendant is a company duly registered under the Companies Act,1956. The second defendant is a Managing Director of the first defendant. The suit is based on demand promissory notes. According to the case of the plaintiff, on 22nd November, 1995, the second defendant on behalf of the first defendant executed and delivered to the plaintiff two

demand promissory notes in the amount of Rs.50,00,000/- and Rs.30,00,000/- respectively together with interest at the rate of 15% p.a. At the time of execution of the demand promissory notes, two cheques in the sum of Rs.50,00,000/- and 30,00,000/- respectively were issued by the first defendant company in favour of the plaintiff.

3. According to the case of the plaintiff, the first defendant company represented that it was coming out with a public issue on or before 31st march 1996 and the said amount was required by the first defendant company to commence its operation. Reliance is placed on a resolution dated 17th October 1995 authorising the second defendant to borrow the said amount. Apart from the said promissory notes, the second defendant on behalf of the first defendant had executed an undertaking in writing assuring the plaintiff not to issue any stop payment instruction to the banker for the payment of the said two cheques and further that in the event the first Defendant failing to make repayment of the sum of Rs.50,00,000/- on or before the due date, the second defendant will pay the said amount together with liquidated damages at the rate of 33% p.a. The second defendant executed a separate letter of guarantee which was notarised on 8th November 1995 by which he guarantied repayment of the said amounts of Rs.50,00,000/- and 30,00,000/- respectively on or before 31st March 1996. According to the case of the plaintiffs, by a

letter dated 25th November 1995 addressed by the first defendant to the second defendant, an undertaking was given that if default is made in the payment of Rs.50,00,000/- and Rs.30,00,000/- on the due date i.e. 31st March 1996, the defendants will be liable to pay liquidated damages at the rate of 4% p.m. from 1st April 1996.

4. By a letter dated 9th December 1995, the defendants acknowledged of having received Bridge loan of Rs.80,00,000/-. A request was made for grant of further loan of Rs.80,00,000/- to 1,00,00,000/-. In March 1996, the second defendant and another director of the first defendant approached the plaintiff and requested for extension of time for payment of Rs.80,00,000/- and also requested the plaintiffs to advance a further sum of Rs.1,00,00,000/- to the first defendant. As the plaintiff agreed to grant time to pay the sum of Rs.80,00,000/- till 10th June 1996, the second defendant executed a letter of guarantee dated 27th March 1996 by which he guranteed repayment of amount by the first defendant with interest by 30th June 1996.

5. The second defendant for himself and on behalf of the first defendant executed a promissory notes in the sum of Rs.1,00,00,000/- together with interest at the rate of 15% p.a. in favour of the plaintiff for the value received. The second defendant gave an undertaking dated 28th March 1996 not

to issue stop payment instruction to the bankers for payment of cheques in the sum of Rs.80,00,000/-. A letter of guarantee was also executed by the second defendant in the sum of Rs.1,00,00,000/-. The first Defendant company issued two cheques to the Plaintiff dated 29th June 1996 and 27th June 1996 in the sum of Rs.80,00,000/- and Rs.1,00,00,000/- respectively.

6. As the defendants failed and neglected to pay the amounts, correspondence was made by the plaintiffs calling upon the defendants to pay the amount. An assurance was given by the defendants to pay the amount. One of the such letters was sent by the plaintiffs by a fax on 8th November 1996 was replied by the defendants on 9th November 1996 giving a promise to pay the dues. By a further letter dated 26th December 1996, the first defendant promised to arrange for funds within ten days. However, along with the letter dated 26th December 1996, a draft only in the sum of Rs.50,000/- was forwarded by the first defendant. In reply to the fax message dated 22nd December 1996, the defendants again assured the plaintiffs to pay the amount. Ultimately, on 5th January 1998, a notice was issued by the plaintiffs to the first defendant calling upon the first defendant to pay amount of Rs.1 crore 80 lacs with interest thereon. The said notice was issued under section 434 of the Companies Act,1956. The defendants replied to the said notice by the Advocate’s letter

dated 22nd January 1998. It was contended that the loan transaction between the defendants and the plaintiffs is contingent upon completion of envisaged public issue of the shares. Therefore, this suit has been filed. It is stated in the plaint that on the basis of the promissory notes, the plaintiffs was filing a separate suit against the defendants.

7. The plaintiff has tendered on record an Affidavit of one Kishore Kokal, Constituted Attorney of the plaintiff for proving the claim in the suit. The said affidavit is taken on record and marked ‘X’ for identification. Attested true copy of the Power of Attorney dated 26th April 1999 executed by the plaintiff in favour of the said Kishore Kokal has been produced along with the compilation of the documents. The compilation of documents is taken on record and marked ‘Y’ (collectively) for identification. The plaintiff has produced original demand promissory notes, letters of guarantee executed by the second defendant and the original cheques issued by the first defendant in favour of the plaintiff. The demand promissory notes dated 26th November 1995 in the sum of Rs.50,00,000/- and 30,00,000/- respectively have been duly proved by the said affidavit. The demand promissory notes dated 18th November 1996 executed by the defendants have also been duly proved. The letters of guarantee executed by the second defendant in favour of the plaintiff from time to time have also been duly proved. Undertakings given by the second

defendant are also duly proved by the said Affidavit. The correspondence made by the first defendant is also placed on record in which assurances have been given by the defendants from time to time to pay the amount. The said assurance is reflected in various letters including letter dated 9th November 1996. The correspondence made between the parties is duly proved. The claim made by the plaintiff in the suit has been duly proved by the said Affidavit. There is no contest by the defendants. Thus, the plaintiff has established the right to recover the amount of Rs.98,62,027/- from the defendants.

8. The plaintiff has claimed further interest at the rate of 18% p.a. from the date of institution of the suit till realisation. Considering the facts and circumstances of the case, further interest at the rate of 12% p.a. deserves to be granted.

9. Hence, the suit is decreed as prayed with a modification that interest payable on the decretal amount will be at the rate of 12% p.a. from the date of institution of the suit till realisation or payment.

10. The plaintiff will be entitled to refund of court fees, if any, as per the rules.

11. Certified copy is expedited.

JUDGE